

1 BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

2 NANCY KEENAN

3 STATE OF MONTANA

4 * * * * *

5 BARBARA PARISIAN)

6 Appellant,)

7 vs.)

OSPI 153-88

8) DECISION AND ORDER

TRUSTEES, ELEMENTARY SCHOOL)

DISTRICT NO. 13, & HIGH)

9 SCHOOL DISTRICT NO. G,)

10 Respondent.)

11 * * * * *

12 STATEMENT OF THE CASE

13 This matter is an appeal from the decision of the Hill
14 County Superintendent of Schools granting the District's MOTION
15 TO DISMISS for failure to file the Notice of Appeal within 30
16 days of the final decision of the Board of Trustees of Box Elder
17 School District 13/G.

18 Appellant, Barbara Parisian, a tenured teacher employed in
19 the Box Elder School system, filed a Notice of Appeal with the
20 Hill County Superintendent of Schools on January 12, 1988
21 contending that the Supreme Court decision in Sorlie v. School
22 District No. 2, 205 Mont. 22, 667 P2d. 400, required that the
23 District pay her no less than the salary she had received during
24 the 1986-87 school term for the 1987-88 term.

25 The District filed a Motion to Disqualify the Hill County

1 Superintendent, Shirley Isbell. The Motion was granted and
2 Dolores Hughes, Phillips County Superintendent, was appointed to
3 serve as hearing officer in this matter. A hearing was held in
4 this matter on April 21, 1988.

5 Following the hearing, the hearing officer granted the
6 District's Motion to Dismiss for failure to file a notice of
7 appeal with the County Superintendent within the 30 day period
8 required by Rule 10.6.103(5), ARM. The Appellant filed her
9 Notice of Appeal with the State Superintendent of Public
10 Instruction on June 21, 1988.

11 DECISION AND ORDER

12 Having reviewed the complete record of the hearing held
13 before the County Superintendent and the briefs of the parties,
14 this State Superintendent makes the following decision:

15 The Superintendent of Public Instruction has jurisdiction to
16 hear this appeal in accordance with section 20-3-210, MCA, and
17 10.6.122 ARM.

18 There is substantial, reliable evidence on the record to
19 support the finding of fact of the County Superintendent that
20 the Notice of Appeal filed on January 12, 1988 was not filed
21 within the 30-day period allowed under Rule 10.6.103(5) ARM.

22 The decision of the County Superintendent is hereby
23 affirmed.
24
25

MEMORANDUM OPINION

Respondent is correct in citing 10.6.103(5) ARM as controlling when an appeal must be filed with the County Superintendent. Rule 10-6-103(5) ARM states:

A school controversy contested case other than issues involving education of handicapped children shall be commenced by filing a notice of appeal with the county superintendent within 30 days after the final decision of the governing authority of the school district is made. (Emphasis added.)

This rule refers to a specific act on the part of the Board, "the final decision." The Supreme Court in Gallup v. Superintendent of Public Instruction, stated:

Having failed to pursue his statutory administrative remedies within the time allowed by law, Gallup's right to contest the termination of his employment as a tenured teacher was at an end. The statutory time limitations are mandatory to provide for prompt resolution of teacher employment controversies in the public interest, as well as the respective interests of the principals involved.

ID 172 Mont. 400, 403, 563 P.2d 1139 (1977).

The administrative rules adopted by the Superintendent of Public Instruction in accordance with section 20-3-107(3), MCA, reflect the policy enunciated by the Court in Gallup. It would be contrary to this policy to adopt the rationale of Appellant that each time she is paid less than the amount required by section 20-4-203, MCA, a new 30-day filing period begins. Therefore, this Superintendent does not find Appellant's argument that this is a continuing violation, persuasive.

1 The Standard of Review.

2 The next issue is whether the finding of fact that Appellant
3 failed to file her notice of appeal within 30 days of the final
4 decision of the Board is "clearly erroneous in view of the
5 reliable, probative and substantial evidence on the whole
6 record." 10.6.125(4) (e) ARM.

7 The Evidence on the Record.

8 Entered as Petitioner's exhibit #2 was a copy of the 1987-88
9 contract dated March 31, 1987 and signed by three members of the
10 Board of Trustees and the Appellant. Respondent's exhibit #1
11 was a copy of the July 27, 1988 memorandum from Dwight Hopkins,
12 Chief Administrator for Box Elder School District 13-G to
13 Appellant. In addition, Appellant testified that she did not
14 file a notice of appeal with the County Superintendent within 30
15 days of receipt of the July 27, 1987, memorandum from Dwight
16 Hopkins. See transcript, page 21, lines 18 through 22.

17 The Appellant is correct in arguing that a copy of the Board
18 minutes reflecting the action taken by the Board in regard to
19 her 1987-88 salary would be the "best evidence" of the date the
20 final decision was made by the Board. The District did not
21 introduce any minutes into evidence. However, a copy of the
22 contract dated March 31, 1987, signed by the Appellant and three
23 members of the Board of Trustees was entered into the record,
24 without objection, and was marked as "Petitioner's exhibit #2."

1 Paragraph 2 of that contract states in pertinent part:

2 In consideration of the Teacher's services as above
3 contracted, the school District agrees to pay the
4 Teacher the gross yearly salary of \$27,148.00, minus
5 deductions required by law or requested by the Teacher
6 in accord with the Master Agreement.

7 The above language of the contract put the Appellant on
8 notice that the stated salary did not reflect the \$5000.00
9 stipend she had been paid the previous year. At a minimum, she
10 had a duty to inquire whether the salary stated was in error.
11 Testimony of Dwight Hopkins, chief administrator of the
12 District, confirms that Appellant did ask him about the \$5000
13 sometime prior to July 27, 1987. The Appellant admits that she
14 did not file her Notice of Appeal with the County Superintendent
15 within 30 days of receipt of the memorandum dated July 27, 1987.

16 This State Superintendent concludes that the record before
17 the County Superintendent contains substantial reliable evidence
18 that the Appellant did not file her Notice of Appeal within 30
19 days of the final decision of the Board of Trustees as required
20 by Rule 10.6.103(5) ARM.

21 DATED this 30 day of June, 1989.

22 Nancy Keenan
23 NANCY KEENAN
24 State Superintendent
25

CERTIFICATE OF SERVICE

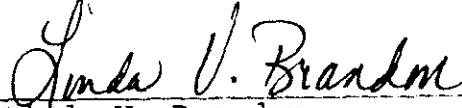
THIS IS TO CERTIFY that on the 30th day of June, 1989, a true and exact copy of the foregoing Decision and Order was deposited in the mail, first class, postage prepaid to the following:

Emilie Loring
Hilley & Loring
500 Daly Avenue
Missoula, MT 59801

Robert Melcher
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Malta, MT 59538

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Linda V. Brandon
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Office of Public Instruction